



19ES04268

ESSEX POLICE DEPARTMENT  
AFFIDAVIT OF PROBABLE CAUSE FOR ARREST

STATE OF VERMONT  
COUNTY OF CHITTENDEN S.S.

Now comes OFFICER Joshua L. Otey, Affiant, being duly sworn and on oath deposes and says he has probable cause to believe that Anthony R Bellew (DOB: 03-24-1969) has committed the crime(s) of Driving Under the Influence of Alcohol, in violation of Title 23 V.S.A. 1201, Aggravated Assault, in violation of Title 13 V.S.A. 1024(a)(1)(4).

I am a law enforcement officer in the State of Vermont certified by the Vermont Criminal Justice Training Council since 2006. The following incident took place in the County of Chittenden, State of Vermont. The information contained within this affidavit is based upon my training, experience, and investigation, as well as information conveyed to me by other law enforcement officers. The following is either known to me personally or has been related to me by persons having direct knowledge of the events described, including other law enforcement officers involved in this investigation. Since this affidavit is submitted to set forth probable cause, I have not included each and every fact known to me concerning the investigation.

On August 8, 2019 at approximately 1737 hours Anthony R Bellew 03-24-1969 hereinafter referred to as defendant operated a motor vehicle being a 2006 Ford van bearing Vermont Registration HLE456 upon a public highway being the parking lot of McDonalds located on Pearl Street in Essex Junction Vermont while under the influence of alcohol. Additionally, it should be noted that the defendant is a person who has previously been convicted of a violation of this section and on this date refused a law officer's reasonable request under the circumstances for an evidentiary test.

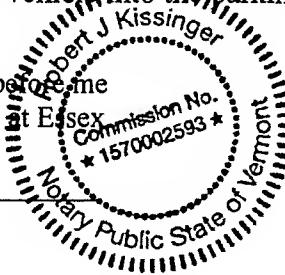
Additionally, it should be noted that upon arrival at the Essex Police Department with the defendant in law enforcement custody, the defendant attempted to cause serious bodily injury to another being this officer in that he purposely forced his knee into my testicles as I was removing him from the rear of my patrol vehicle for processing and therefore intended to prevent a law enforcement officer from performing a lawful duty the defendant caused physical injury to a person being this officer.

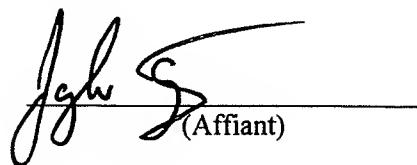
On August 8, 2019 at approximately 1738 hours I was dispatched to McDonalds located at 106 Pearl Street for a reported operator suspected to be operating under the influence. Dispatch further advised the complainant (later identified to be Manager Alexander Dahlgren) reported the male operator of a Ford vehicle bearing Vermont Registration HLE456 currently in the parking lot was suspected of being impaired and had struck the building while operating through the drive-thru.

Upon arrival I observed the above noted vehicle parked in a space on the east side of the McDonalds parking lot facing east. I parked my patrol vehicle south of the suspect vehicle in a manner not to block the vehicle into the parking space.

Subscribed and sworn to before me  
On Aug 8 2019

(Notary Public)



  
8-8-19  
(Affiant)  
(Date)



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I approached the drive-thru window and made brief contact with the Manager Dahlgren who pointed to the suspect vehicle and advised he did not believe there was a lot of damage to the building but wanted to report the incident for the welfare of the operator.

I approached the suspect vehicle on the passenger side and observed a black dog sitting on the seat. I observed a male subject who was later identified to be the defendant sitting in the operators seat eating what appeared to be a cheeseburger. I noted a key in the ignition of the vehicle and an open can of Labatt Blue (Alcohol) in the front console of the vehicle nearest the operator. I introduced myself and engaged the operator in casual conversation including asking the name of his dog while petting the dog on the head as it approached me at the open passenger side window. The defendant advised the dog's name was Pal. I noted a strong odor consistent with that of an alcoholic beverage emitting from the breath of the defendant as he spoke with me. The defendant immediately became confrontational and requested my badge number. I advised the defendant of the complaint and requested he provide his license, registration, and insurance information which he refused while providing a vulgar response including "fuck you". I advised the defendant that he was required by Vermont Law to identify himself and he continued to refuse while raising his middle finger at me and provide additional vulgar responses. I noted the defendant's eyes were bloodshot and watery. I requested to operator exit the vehicle to participate in field sobriety exercises and he refused. The defendant persisted in his refusal to provide identification.

I ordered the defendant to exit the vehicle and he refused while advising that he would not do so. I advised the defendant that he was under arrest and ordered him to exit the vehicle. The defendant exited the vehicle and was secured into handcuffs which were double locked and adjusted for proper fit.

The defendant was secured into the rear of my patrol vehicle and persisted in his refusal to provide identification.

Officer Remillard obtained a sworn written statement from McDonalds employee Keisha Aikey 08-29-2001. Aikey advised "*when the driver pulled up to the window, he was acting as though he did not know what was going on he said "whats going on?" he also said that he didn't feel good multiple times, He ran into the building at the first window, he smelled like he had been drinking. He did not seem okay.*"

The defendant was transported to the Essex Police Department for processing. Upon arrival at the Essex Police Department I opened the rear passenger side door to assist the defendant in exiting. The defendant moved both of his feet outside the vehicle and was able to touch the ground as he scooted his butt toward the edge of the seat. The defendant then commented that he needed assistance getting out. I got close to the defendant and placed my hand on the back of his shoulder and provided support for the defendant to stand up. At this time the defendant placed all of his

Subscribed and sworn to before me  
On Aug 8 2019, at Essex.

(Notary Public)



(Affiant)

8-8-19

(Date)



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weight on the ground, raised his leg, and delivered a strong deliberate knee strike to my testicles. I immediately lost my breath and felt a numbing and tingling pain to my testicles which radiated down my right leg. I struck the defendant on his right shoulder and directed him back into the patrol vehicle in order to prevent additional assaultive strikes against me. The defendant laughed and said something to the effect of "ha I got ya". At this point I was experiencing an impairing pain and was aided by Officer Chiravalle who escorted the defendant into the police department. The defendant was ultimately identified by his Vermont operator's license photograph while at the Essex Police Department. The defendant was processed and refused to provide a breath sample during processing procedures.

It should be noted that the defendant was continuously aggressive and made statements including that he was going to come after me.

At the time of writing this affidavit I am continuing to experience pain which appears to radiate from my right testicle and down my right leg. I have experienced pain while urinating specifically a feeling like glass within the tip of my penis which increases during urination.

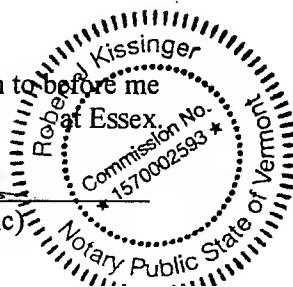
A criminal history query revealed that the defendant has (1) one felony conviction for Felony Possession of Cocaine, and (6) six misdemeanor convictions including multiple DUI's, Domestic Assault, Unlawful Mischief, and Disorderly Conduct. The defendant has failed to appear at court proceedings as noted on his Criminal History Records out of North Carolina.

On August 8, 2019 at approximately 2019 hours I contacted the Honorable Judge Nancy Waples for the purpose of bail which was set at \$7,500 cash.

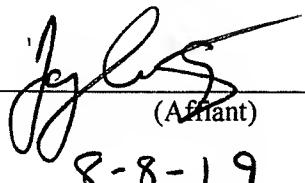
The defendant was subsequently lodged at the Chittenden County Correctional Center.

Due to the assaultive actions of the defendant he was not fingerprinted or photographed at the time of processing. I respectfully request the Honorable Court order the defendant appear for processing at the Essex Police Department as a condition of release.

Subscribed and sworn to before me  
On August 8 2019



(Notary Public)

  
(Affiant)

8-8-19

(Date)

CASE# 19ES04268

NOW COMES Joshua Otey, affiant, being duly sworn and on oath, deposes and states that I have probable cause to believe that Anthony R Bellew 03-24-69, hereinafter referred to as operator and defendant, committed the offense of Driving Under the Influence in violation of 23 V.S.A. § 1201. In support of this charge the affiant states:

1. I am a law enforcement officer certified by the Vermont Criminal Justice Training Council. I am trained and certified by the Vermont Criminal Justice Training Council to operate the DataMaster infrared breath-testing instrument.
2. On 08-08-2019 at 1737 hours, the defendant was operating/attempting to operate/in actual physical control, of a (year/make/model) 2006 Ford Fiesta van, bearing registration HLE 456 on a public highway known as McDonalds Parking lot (Pearl St) in the town/city of Essex Junction in the county of Chittenden in the State of Vermont.
3. A.  My observations of the defendant's operation that resulted in my making this stop are documented on Page 1-A.

OR B.  Although I did not observe operation in this case, I was able to determine that the defendant operated the above described vehicle at 1737 hours based upon the evidence presented on Page 1-A of this affidavit.  
(If officer did NOT observe the driving, submit with case statements from witnesses establishing that this accused drove the vehicle, the approximate TIME, and the public highway.) (see Affidavit)

4. OBSERVATION OF OPERATOR

Odor of intoxicants  Strong  Moderate  
Eyes  Watery  Bloodshot  
Speech  Unintelligible  Mumbled

Faint  None  
 Normal  Slurred  Confused  Normal

1. Have you consumed any alcoholic beverages?  
 No  Yes: How many? \_\_\_\_\_
2. How long ago was your first drink? \_\_\_\_\_
3. How long ago was your last drink? \_\_\_\_\_

IF OFFICER DID NOT OBSERVE THE DRIVING  
(Whether crash or not) ASK: Did you drink any alcoholic beverage after driving? No / Yes: How many? \_\_\_\_\_

4. How much, if anything, have you had to drink in the last 30 minutes? \_\_\_\_\_
5. Have you consumed any drugs or medications?  No  Yes: What? \_\_\_\_\_
6. Other observations (e.g. alphabet, counting, etc.): \_\_\_\_\_
7. Difficulty getting out of vehicle?  No  Yes: Describe:  
Standing  Falling  Extreme Sway  Slight Sway  Unsteady  Steady  
Walking  Falling  Stumbling  Unsteady  Steady

Alcoholic containers in vehicle?  No  Yes # 2 Types: 1 open in console  Full  Empty  None cigarette Blue  
1 full can by passenger seat

5. SOBRIETY EXERCISES

Is there any reason that the operator cannot perform these exercises?  No  Yes: Explanation (e.g. roadway, health, etc.):

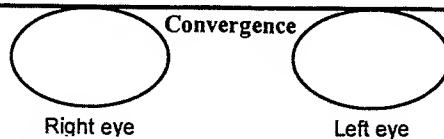
*Refused*

	L. EYE	R. EYE	Total Clues
HGN	<input type="checkbox"/> Lack of smooth pursuit	<input type="checkbox"/>	
	<input type="checkbox"/> Distinct jerkiness at maximum deviation	<input type="checkbox"/>	
	<input type="checkbox"/> Onset of distinct jerkiness prior to 45°	<input type="checkbox"/>	
Walk & Turn	<input type="checkbox"/> Can't balance during instructions	<input type="checkbox"/> Starts before instructed	<input type="checkbox"/> Incorrect number of steps
	<input type="checkbox"/> Stops walking to steady self	<input type="checkbox"/> Does not touch heel to toe	<input type="checkbox"/> cannot do exercise
	<input type="checkbox"/> Loses balance/steps off line	<input type="checkbox"/> Uses arms for balance	(steps off line 3 times)
	<input type="checkbox"/> Loses balance while turning/turns incorrectly		Total Clues
One Leg Stand	<input type="checkbox"/> Sways while balancing	<input type="checkbox"/> Hopping	
	<input type="checkbox"/> Cannot do exercise (puts foot down 3 times)	<input type="checkbox"/> Puts foot down	
	<input type="checkbox"/> Uses arms to balance (raises arms more than 6 inches)		Total Clues

Comments (e.g. shoes, etc.):

*Refused*

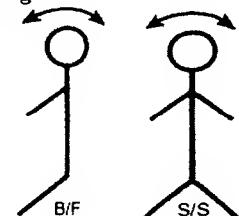
To be completed by  
ARIDE or DRE  
trained Officers only



Modified Romberg

Internal Clock

Est. as 30 seconds



Officer's opinion of Impairment

None  Slight  Moderate  Substantial  Extreme

PBT Result        % BAC at        Hrs. Model:        Serial #

TIME OBSERVATION OF OPERATOR STARTED: 1819 Hrs. Timepiece used: Datamaster

## 6. BEFORE WE GO ANY FURTHER I WANT TO EXPLAIN THESE RIGHTS TO YOU: (Check as read.)

You have the right to remain silent.  
 Anything you say can and will be used against you in a court of law.  
 You have the right to talk to a lawyer before questioning and to have a lawyer present with you during questioning.  
 If you cannot afford to hire a lawyer, one will be appointed to represent you at public expense, before any questioning, if you wish. In Vermont, that is called a public defender.  
 If you decide to answer questions, you may stop the questioning at any time.  
 Do you understand each of these rights I have explained to you? Reply:  Yes  No  
 Do you want to talk to me now? Reply:  Yes  No

If answer is "NO," OFFICER SHOULD STOP, and say the following:

"There will be no questions. I will now go to the subject of evidentiary testing." (OFFICER SHOULD GO IMMEDIATELY TO No. 8 "IMPLIED CONSENT" on page 3).

If answer is "YES," OFFICER SHOULD READ THE WAIVER to defendant and ask if she/he wishes to sign, as follows:

## WAIVER

I have been advised that I have the right to remain silent, to be represented by a lawyer, to talk with one prior to questioning and to have one present during questioning. Knowing my rights, I agree to waive them and talk to you now. No threats or promises have been made to me.

Date/Time (Specify timepiece used)

Operator's Signature (or time of taping)

Comments:

If defendant declines the waiver or requests a lawyer, OFFICER SHOULD STOP, and say the following:

"In that event, you are hereby notified that I will not ask you any questions. We will now go to the subject of evidentiary testing. After that, you will have an opportunity to talk with a lawyer before making your decision whether to take or refuse the test." (OFFICER SHOULD GO IMMEDIATELY TO No. 8. "IMPLIED CONSENT" on page 3).

## 7. INTERVIEW

Where were you driving to? \_\_\_\_\_

Where were you driving from (this time)? \_\_\_\_\_

How long ago did you drive from that location? \_\_\_\_\_

What food have you eaten in the last six hours? \_\_\_\_\_ How long ago did you eat that? \_\_\_\_\_

What have you been drinking? \_\_\_\_\_

 Beer  Liquor  Wine – Specific type (brand/name of drink) \_\_\_\_\_

How many drinks of each kind did you have? \_\_\_\_\_

How long ago did you start drinking? \_\_\_\_\_ How long ago did you stop drinking? \_\_\_\_\_

How much if anything did you drink in the 30 minutes before you were stopped driving? \_\_\_\_\_

Who were you drinking with? (obtain names) \_\_\_\_\_

Where (specific location) were you drinking? \_\_\_\_\_

How much do you weigh? \_\_\_\_\_

Are you tired?  No  Yes – Are you ill?  No  Yes, if so describe: \_\_\_\_\_Do you have any physical handicaps?  No  Yes, if so describe: \_\_\_\_\_Do you limp?  No  Yes Do you have diabetes?  No  Yes Taking insulin?  No  YesDo you have epilepsy?  No  YesHave you been injured lately?  No  Yes, if so describe: \_\_\_\_\_Do you wear glasses?  No  Yes Do you wear contact lenses?  No  YesIn the last 24 hours have you taken any medications or drugs?  No  YesWere the drugs/medications affecting your driving?  No  Slightly  Moderately  Substantially

Please describe what drug/medication and the dosage/amount consumed? \_\_\_\_\_

Are you under the influence of drugs right now?  No  Slightly  Moderately  SubstantiallyAre you under the influence of alcohol now?  No  Slightly  Moderately  SubstantiallyWere you under the influence of drugs while driving the vehicle?  No  Slightly  Moderately  SubstantiallyWere you under the influence of alcohol while driving the vehicle?  No  Slightly  Moderately  SubstantiallyWere you feeling the effects of the alcohol while driving the vehicle?  No  Slightly  Moderately  SubstantiallyHave you been convicted of Driving Under the Influence in VT or any other State?  No  YesAre you currently on Probation?  No  Yes Are you currently on Conditions of Release?  No  Yes

OTHER QUESTIONS/ANSWERS (Re: DUI or any OTHER OFFENSES involved) use supplemental page.

8. **IMPLIED CONSENT** (Check as read).

I am a law enforcement officer of the State of Vermont.

I have grounds to believe that you have operated, attempted to operate, or been in actual physical control of a vehicle on a public highway while under the influence of intoxicating liquor, or drugs, or both.

**(FATAL/SERIOUS INJURY ONLY)** I have probable cause to believe that you are the ~~surviving operator~~ of a motor vehicle involved in an accident or collision resulting in death or serious bodily injury to another person. I have reasonable grounds to believe that you have some amount of alcohol or other drug in your system

Vermont law authorizes me, as a law enforcement officer, to request an evidentiary test to determine whether you are under the influence of alcohol or other drugs. Before you decide, I will explain your rights.

If you submit to an evidentiary test, you have the right to have additional tests administered at your own expense by someone of your own choosing. The results will be sent only to you or your lawyer. At this time, I am also providing you with a list of facilities in this area that are available to you for drawing a sample of your blood.

In addition, if you submit to an evidentiary test administered with an infrared device, following your receipt of the results of that test, you have a right to a second evidentiary test administered by me using the infrared device.

If the results of the evidentiary test indicate that you are under the influence of alcohol, you will be subject to criminal charges and your license or privilege to operate a motor vehicle will be suspended for at least 90 days.

If you refuse to provide an evidentiary test, and if you have been previously convicted of Driving Under the Influence of intoxicants (DUI/DWI) in Vermont under Title 23 V.S.A. Section 1201 or in any other jurisdiction which prohibited operating, attempting to operate, or being in actual physical control of a motor vehicle on a highway while under the influence of intoxicating liquor or drugs, or both, or while having .08 percent or more by weight of alcohol in the person's blood or an alcohol concentration of .08 or more, you may be charged with the crime of criminal refusal.

If you refuse to provide an evidentiary test and you have been involved in an accident/collision resulting in serious bodily injury or death of another, you may be charged with the crime of criminal refusal.

If you refuse to provide an evidentiary test, your refusal may be offered into evidence against you at trial.

**(FATAL/SERIOUS INJURY ONLY)** If you refuse to provide an evidentiary test and you have been involved in an accident/collision resulting in serious bodily injury or death to another, the court may issue a search warrant and order you to submit to a blood test. Your refusal may be offered into evidence against you at trial, whether or not a search warrant is sought, and the results of any blood test ordered by the court may be offered into evidence against you at trial.

Your privilege to drive shall be suspended for at least six months if you refuse the evidentiary test and the court finds my request is reasonable.

You have the right to talk with a lawyer before deciding whether or not to submit to an evidentiary test. If you want a lawyer, a Public Defender will be contacted for you at the state's expense, regardless of your income, or an attempt will be made to contact an attorney of your choice at your expense.

You must decide whether or not to submit to the evidentiary test within a reasonable amount of time and no later than 30 minutes from the time of the initial attempt to contact an attorney, regardless of whether a consultation takes place.

Do you understand each of these rights?  Yes  No **I'm going to Remain Silent**

Do you want to talk to a lawyer before deciding whether or not to submit to a test?

Yes Time of first attempt After 15 min (per timepiece) # of attempts 1 1523  
 Lawyer contacted: on call E.L.Zebeth Kruska Time Started: After 15 min Time Finished: 1545 1526

No

*"Fuck You dude take me to jail!"*

Operator's Signature

Witness

*(If operator refuses to sign you MUST contact an attorney unless a recorded waiver is obtained.)*

Will you give a sample of your breath as evidence  Yes  No. (IF "No," OFFICER SHOULD GO TO Sec. 10) **"Fuck You"**

IF YES, 15 Min **OBSERVATION PERIOD** started at: 1832 hours Timepiece used: DataMaster

The operator has been observed for 15 uninterrupted minutes during which he/she did not burp, belch, or vomit.

Have you burped, belched, or vomited within the last 15 minutes?  Yes  No **"I'm going with the 5th"**  
 If Yes, restart 15 min. observation. Restarted at: 1832 hrs. (per timepiece)

Your result is Incomplete % at 1853 per DM clock AND 1855 (per timepiece)  
 date Refused.

If result is "INVALID", officer should rerun evidentiary test by replacing mouthpiece, then RE-STARTING NEW 15 MIN.  
**OBSERVATION** period. Restarted at: \_\_\_\_\_ hrs. (per DM Clock)

Your result is \_\_\_\_\_ % at \_\_\_\_\_ per DM clock AND \_\_\_\_\_ (per timepiece)  
 date \_\_\_\_\_

Do you want a second infrared test NOW?  Yes  No

I administered the operator's DataMaster breath test in accordance with my training and certification.  
 The evidentiary ticket(s) is (are) incorporated by reference into this affidavit.

## 9. READ THE APPROPRIATE ALTERNATIVE TO OPERATOR

A. Since you are being released, if you wish additional tests, to be paid for at your own expense, you will have to make your own arrangements. Do you intend to obtain additional tests?  Yes  No  
Test Kit Provided  Yes  No

If, at the completion of processing, the operator, after reasonable efforts, is unable to arrange transportation necessary to obtain an additional test and the operator wants a test, the officer must arrange to provide transportation to a facility that will administer the test.

B. Because you are being detained for a short period prior to being released, I will make arrangements for you to have an additional test, at your expense, if you so desire.

Do you want me to transport you to obtain an additional test?  Yes  No

Test Kit Provided  Yes  No Arrangements:

C. Because you are being lodged, you must tell me now if you want an additional test, at your expense, so that I can make the arrangements. Do you want me to transport you to obtain an additional test?  Yes  No

*Flipped me off and laughed Said  
I'm full of Shit*

## 10. STATUS OF OPERATOR:

Inquired as to the operator's current address and informed him/her that information is required for future mailings  
Mailing Address Esser St & T Residential Address \_\_\_\_\_

Is operator on active duty, or scheduled to go on active duty, in the Armed Forces?  Yes  No - If yes, Command Unit, Service Branch, and Service # \_\_\_\_\_

Operator identified by  License \_\_\_\_\_  Other I.D. \_\_\_\_\_  Picture I.D. \_\_\_\_\_  
 Citation  Lodged  Released without Citation  Complaint # \_\_\_\_\_  Other \_\_\_\_\_

## 11. DISCLOSURE OF EVIDENCE:

## A. OFFICER'S OBSERVATIONS OF OPERATOR

Attitude  Excited  Talkative  Indifferent  Profane  Combative

Insulting  Cocky  Cooperative  Polite  Mood Swings

Other: Threatening that he was coming after me and Assaulted Me

Unusual Actions  Hiccuping  Belching  Vomiting  Fighting  Laughing

## B. MOTOR VEHICLE RECORD &amp; DUI CONVICTIONS

The DMV RECORD of Operator is attached and incorporated by reference as if fully set forth herein.

Record discloses prior DUI Convictions:  No  Yes; dates of prior DUI conviction(s): 2-11-03 / 8-1-02 / 2-11-03

C. RECORDING: Is there a separate audiotape?  Yes  No

Video: Cruiser  Yes  No DUI Processing Room  Yes  No  Other: \_\_\_\_\_

## D. WITNESSES (Passengers / other persons)

Name Keisha Aitkey Address \_\_\_\_\_

Phone # \_\_\_\_\_  Passenger  Other Describe Condition: Fast Food clerk

Statement obtained:  Yes  No

Other witnesses listed on separate page

## 12. DISPOSITION:

Operator released to: Name/Address: Chittenden Corrections Phone #: \_\_\_\_\_; or

Operator taken to: CCCC Phone #: \_\_\_\_\_

Acknowledged operator is impaired  No  Yes:  Slight  Extreme  Other \_\_\_\_\_

Signature: \_\_\_\_\_

Date & Time processing completed: 8/8/2019 per timepiece.

Disposition of operator's vehicle: Parked at McDonalds Condition of operator's vehicle \_\_\_\_\_

VIN of operator's Vehicle \_\_\_\_\_

Name of Registered Owner(s) Anthony Bellw Address \_\_\_\_\_

Being duly sworn and on oath, I hereby certify that the information contained in this form has been accurately recorded and accurately describes my observations of the actions and statements of the operator identified on page one.

*[Signature]*  
Affidavit

8-8-2019  
Date

Subscribed and sworn before me this 8<sup>th</sup> day of August 2019, *[Signature]*

Notary Public

